

Application Number 09/856,228 (Linden) Art Unit: 3725 Page 11 of 17

REMARKS

I. Status of the Application

Claims 1-4, 11, 19, and 21-25 were pending. With this amendment, Applicant has amended claims 1-4, 11, 19, and 21-25, currently or formerly canceled claims 5-10, 12-18, and is currently adding claims 26-38. The amendments to the claims are supported by the application. Accordingly, entry of the amendments is respectfully requested. Please note that the amendments are being made in accordance with MPEP rule 1.121(c)(2), showing current additions and current deletions but not showing previously deleted material, even though in this morning's voice mail, it seemed that the Examiner asked that previous deleted material be showed.

Applicant has amended the claims to recite particular embodiments that Applicant, in his business judgment, has determined to be commercially desirable at this time. The claim amendments have not been submitted for any reason relating to patentability. Indeed, Applicant contends that the Examiner has not established a prima facie showing to support the Examiner's rejections and, as such, Applicant reserves the right to pursue the subject matter in one or more continuing applications.

Application Number 09/856,228 (Linden) Art Unit: 3725 Page 12 of 17

II. Notice of Non-compliance

With regard to the Notice of Non-compliance, Applicant has herewith submitted a replacement set of claims the show properly the modifications to the claims. Accordingly, withdrawal of the objection is respectfully requested.

III. Claim Objections

The Examiner objected to claims 6, 11, 13, 17, 19, and 21-25 under 37 CFR 1.75(c), alleging that the claims are in improper multiple dependent format. Applicant has herewith either amended or withdrawn these claims. The amended dependent claims have been modified to refer to a single claim. Independent claims have been rewritten in proper referential claim format pursuant to MPEP 2173.05(f). Reconsideration and withdrawal of the objection is respectfully requested.

III. Claim Rejections

A. 35 USC §102

The Examiner rejects claims 1-5 under 35 USC §102(e) as being anticipated by 6,744,370 (hereinafter Sleichter). The Examiner's rejections are respectfully traversed.

Application Number 09/856,228 (Linden) Art Unit: 3725 Page 13 of 17

The Examiner asserts that “the structures [of claims 1-5] are met by Sleichter, it is presumed to be inherently capable of the claimed functions.” The Examiner is mistaken.

Applicant reminds the Examiner that she has the initial burden of presenting a *prima facie* showing of anticipation. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). If the examiner fails to make a *prima facie* showing, the rejection is improper and will be overturned. *In re Rijckaert*, 9 F.3d 1531, 1532 (Fed. Cir. 1993); *Novamedix Distrib. Ltd. v. Dickinson*, 175 F. Supp. 2d 8, 9 (D.D.C. 2001). To make a *prima facie* showing that a claim is anticipated the examiner must show that “each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” MPEP 2131 citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Moreover, “the identical invention must be shown in as complete detail as is contained in the ... claim.” MPEP 2131 citing *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

In this instance, in rejecting claims 1-5 the Examiner is presuming that Sleichter inherently can perform the claimed functions. The Examiner is misapplying the law on inherency. Inherency requires that extrinsic evidence makes it clear that the missing descriptive matter is necessarily present in the reference, and that it would be so recognized by persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 49 USPQ2d 1949 (Fed. Cir. 1999). Probabilities or possibilities do not establish inherency. The mere fact that a certain thing may result from a given set of circumstances is not sufficient to show inherency. *Scaltech Inc. v. Retec / Tetra LLC*,

RECEIVED
CENTRAL FAX CENTER

JUL 23 2009

Application Number 09/856,228 (Linden) Art Unit: 3725 Page 14 of 17

178 F.3d 1378, 1384, 51 U.S.P.Q.2D 1055 (Fed. Cir. 1999). Accordingly, reconsideration and withdrawal of the rejections are respectfully requested.

B. 35 USC § 103

The Examiner rejected claims 1-5 under 35 U.S.C. 103(a) as being unpatentable over 5,746,602 (hereinafter Kikinis) in view of 5,984,880 (hereinafter Lander). The Examiner's rejections are respectfully traversed.

1. Claims 1, 4 and 23-25

Claim 1 as amended is directed to an apparatus "operable without scripted control routines executed by the CPU of a PC host computer", which includes "means for receiving input, including means for receiving at least one input from a user and for producing from the input at least one input signal, and means for delivering stimuli, including means for displaying one or more tactile stimuli to the user in response to the input from the user."

Applicant submits that neither of the references cited by the Examiner disclose or otherwise suggest these or distinct features. Claims 3-5 and 23-25 have been amended to include similar or distinctive features and are patentable over the references cited for at least the same reasons. Accordingly, reconsideration and withdrawal of the rejections are respectfully requested.

Application Number 09/856,228 (Linden) Art Unit: 3725 Page 15 of 17

2. Dependent Claims

The dependent claims are allowable for the same reasons as the claims from which they depend. Applicant submits that the dependent claims are patentable for additional reasons. While deemed unnecessary to argue these additional reasons at this time, given the arguments presented above, Applicant reserves the right to present such argument, including the interpretation of any terms of the claims, should it become necessary or desirable to do so. Even so, Applicant requests that the Examiner not limit here inquiry to the patentability of the independent claims in light of the arguments presented above. Rather, Applicant requests that the Examiner consider all of the amendments and the newly added claims with the same level of attention as that of the independent claims.

IV. Request to Incorporate Provisional Patent Applications

This application is related to U.S. Provisional Patent Applications: Ser. No. 60/196,462, filed Apr. 11, 2000; Ser. No. 60/238,234, filed Oct. 4, 2000; Ser. No. 60/243,001, filed Oct. 24, 2000; and Ser. No. 60/244,840, filed Nov. 1, 2000. Applicant requests that each of the above-identified, along with the three formerly identified U.S. Provisional Patent Applications filed in 1999, be incorporated into the specification.

V. Specification

Applicant requests that the Examiner specify the date of the latest entered specification, so that Applicant can review.

RECEIVED
CENTRAL FAX CENTER

JUL 23 2009

Application Number 09/856,228 (Linden) Art Unit: 3725 Page 16 of 17

VI. Conclusion

For the above reasons, Applicant submits that the pending claims are patentable over the references cited by the Examiner. Accordingly, reconsideration and allowance of the pending claims are respectfully solicited.

The Examiner is invited to contact the Applicant's mobile phone at (619) 301-3555 or his work phone (619) 390-6304 or use his work fax number (619) 390-6344 or his email [REDACTED] to expedite prosecution.

mt. craig@yahoo.com

Respectfully submitted,


Craig L. LindenJuly 23, 2009

Date

RECEIVED
CENTRAL FAX CENTER

JUL 23 2009

Application Number 09/856,228 (Linden) Art Unit: 3725 Page 17 of 17

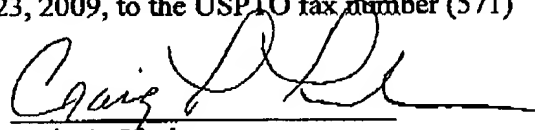
Transmission Certificate Page

CERTIFICATE OF TRANSMISSION BY FACSIMILE

Sir:

The undersigned hereby certifies that the Applicant filed this 18- page transmission, a cover sheet, the Supplemental Reply, Amended Claims (the fee payment will be submitted with these pages) and Reply to Notice of Non-compliance dated June 23, 2009, Via Facsimile on July 23, 2009, to the USPTO fax number (571) 273-8300.

Dated: July 23, 2009


Craig L. Linden